

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

BOBBY GENE BURKE

PLAINTIFF

VS.

CIVIL ACTION NO. 3:10cv26-FKB

COMMISSIONER CHRISTOPHER
EPPS, et al.

DEFENDANTS

OMNIBUS ORDER

Plaintiff, a state inmate, brought this action pursuant to § 1983 alleging a claim of deliberate indifference to serious medical needs. Specifically, he claims that he sustained damage to eyesight as a result of failed surgery performed at Central Mississippi Medical Center (CMMC) by Dr. Leslie Bear. He also claims that the Mississippi Department of Corrections (MDOC) was aware that Dr. Bear was not competent to perform the surgery and that his injuries resulted in part from MDOC's failure to provide proper oversight of private physicians. He also alleges that since the surgery, he has received inadequate medical treatment for his condition. The court has held a *Spears*¹ hearing, and the parties have consented to jurisdiction by the undersigned. Presently before the court are several motions, as well as consideration of scheduling and case management matters. Having considered the complaint, the testimony at the *Spears* hearing, the motions and responses, and having conferred with Plaintiff and with counsel for Defendants, it is hereby ordered as follows.

Defendant CMMC has filed a motion to dismiss [30], arguing that it is not a state actor for purposes of § 1983 and that Plaintiff has failed to meet the statutory

¹ See *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

requirements for a claim under state law. The court concludes that determination of whether CMMC is a state actor would require further inquiry into the relationship between CMMC and MDOC. Only with further factual development can the court determine whether the activities of CMMC are “significantly affected with state involvement,” see *Greco v. Orange Memorial Hospital Corp.*, 514 F.2d 873, 878 (5th Cir. 1975). Accordingly, CMMC’s motion as it pertains to the § 1983 claim is denied. To the extent that Plaintiff is attempting to assert a state law claim against this defendant, that claim is hereby dismissed because of Plaintiff’s failure to give the requisite sixty-day notice under Miss. Code Ann. § 15-1-36(15).

Plaintiff has filed motions to amend his complaint [32 and 34] to specify the correct names of two defendants and also to clarify that he is suing all defendants in their individual and official capacities. These motions are hereby granted. The Clerk is directed to change the docket sheet to correct the spelling to Dr. Leslie Bear for this defendant. Jackson HMA, LLC d/b/a Central Mississippi Medical Center is hereby substituted in the place of Defendant Central Mississippi Medical Center, and the Clerk is directed to make the appropriate change on the docket. The Clerk is further directed to issue a summons for Defendant Bear to be served at the following address: 1815 Hospital Drive, Suite 462, Jackson, Mississippi 39204, and to forward the summons and complaint to the United States Marshal for service of process.

Plaintiff’s motion to appoint counsel [35] is denied.

Defendants are directed to provide Plaintiff with the following documents: All medical records related to his 2007 eye surgery at CMMC; his prison medical records and records from McBride Eye Center since the date of his 2007 eye surgery; and any

documents evidencing a contractual relationship between MDOC and CMMC and between MDOC and Defendant Bear. Plaintiff's motion for production of documents [38] is in all other respects denied.

CMMC's motion to stay discovery [39] is denied as moot.

This cause is set for a bench trial before the undersigned on Wednesday, November 30, 2011 at 9:00 a.m.

All discovery shall be completed by August 31, 2011. All motions, other than motions *in limine*, shall be filed by September 30, 2011.

SO ORDERED this the 25th day of March, 2011.

/s/ F. Keith Ball

UNITED STATES MAGISTRATE JUDGE